



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

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Application of California-American Water Company (U-210-W) (1) to issue, sell and deliver to one or more affiliated entities not exceeding in the aggregate \$187,000,000 of any combination of (a) shares of its common stock and (b) debt securities consisting of long term notes; and (2) exempting the issuance, sale and delivery of such stock and debt securities from the Commission's competitive bidding rule.

A.06-05-005  
(Filed May 5, 2006)

**LATE-FILED PROTEST OF THE DIVISION OF RATEPAYER  
ADVOCATES TO APPLICATION 06-05-005**

Pursuant to Rules 6(a), 44, and 87 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") hereby files this late-filed protest to California-American Water Company's ("Cal-Am") Application ("A.") 06-05-005, which seeks Commission approval for Cal-Am (1) to issue, sell and deliver to one or more affiliated entities not exceeding \$187,000,000 of any combination of (a) shares of its common stock and (b) debt securities consisting of long term notes; and (2) exempting the issuance, sale and delivery of such stock and debt securities from the Commission's competitive bidding rule.

Additionally, in another proceeding, A.06-05-025, Cal-Am, RWE Aktiengesellschaft ("RWE"), Thames Water Aqua Holdings GmbH ("Thames Water"), and American Water Works, Inc. ("American Water") seek Commission authority for the sale by Thames GmbH of up to 100% of the common stock of American Water Works Company, Inc., which would result in a change in control of Cal-Am.

In this protest, DRA will refer to A.06-05-005 as Cal-Am's "stock issuance" application and A.06-05-025 as its "change in control/divestiture" application.

## II. ISSUES

DRA is concerned the change in control/divestiture of Cal-Am and its stock issuance application will affect its capital structure and harm ratepayers. According to the application, American Water owns 100% of Cal Am's stock and American Water owns 100% of American Water Capital Corp.'s ("AWCC") stock. *See* Page 5. Also, AWCC is the holder of Cal-Am's debt, which is subject to the refinancing in the stock issuance application. *See* Page 4. Cal-Am's owes AWCC \$123,463,589, which is due on November 6, 2006 and \$8,000,000, which is due December 1, 2033. *See id.*

Absent the change in control/divestiture, the refinancing presumably would continue to be handled by RWE issuing debt to American Water and/or AWCC. AWCC then in turn would continue to issue debt to Cal-Am; but with the proposed change in control/divestiture, RWE will no longer hold any of American Water/AWCC's or Cal-Am's debt.

RWE presently receives its capital from the European capital markets<sup>1</sup>, but with the change in control/divestiture, American Water will have to presumably refinance under the United States' debt capital markets without the substantial aid and benefit of RWE's credit standing. Thus, the terms of the debt American Water and/or AWCC will be able to receive will certainly differ from the terms they would receive absent the change in control/divestiture. More than likely American Water's new debt will not be held with as favorable terms as it was by RWE, and thus ratepayers will pay higher costs for this new debt.

Currently, American Water owns Cal-Am's stock and American Water is owned by Thames Water, which is a wholly-owned subsidiary of RWE. Thus, American Water's equity is based on its status as a subsidiary of RWE. The change in control/divestiture will affect American Water's capital because it will no longer be a wholly-owned subsidiary, but instead a publicly-traded company. This will affect its credit terms as well as American Water's capital structure and necessarily the cost of

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<sup>1</sup> *See* Page 11 of John Bigelow's Direct Testimony in A.06-05-025.

carrying this debt that will be financed by Cal-Am's ratepayers. Additionally, Cal-Am's new offering will be issued at a time when interest rates are substantially higher than they were when RWE initially acquired Cal-Am. Thus, Cal-Am's application will affect the nature and cost of the debt that American Water and/or AWCC can offer Cal-Am and will affect the amount of capital available to American Water, which could then influence its investment in Cal-Am's equity.

Cal-Am requests authority to issue up to \$187,000,000 of debt and shares of common stock. However, the cost of the capital that is available for refinancing AWCC's debt and for American Water to invest in Cal-Am cannot be determined at this point because the terms that will be available to American Water and/or AWCC for debt will be set at the time the debt is issued and acquired by investors. Moreover, Cal-Am's Opposition Motion states that \$8,000,000 of the \$187,000,000 Cal-Am seeks to refinance is related to its divestiture application. In order to ensure that Cal-Am's ratepayers are not harmed by this proposed transaction, DRA will pursue discovery regarding the question of whether ratepayers will truly be held harmless by this proposed transaction.

What is certain, however, is that Cal-Am will attempt to pass these changes in debt and equity onto Cal-Am's ratepayers. Ratepayers should not be required to pay more for their debt service than what they currently pay under RWE. If additional debt costs are required as a result of the proposed divestiture and refinancing applications, these costs should be the responsibility of RWE and American Water, not Cal-Am's captive ratepayers. DRA's involvement in this proceeding is essential to ensure that the cost of these proposed transactions are not improperly levied on Cal-Am's ratepayers.

## **I. PROCEDURAL ISSUES**

### **A. Need for Hearings and Schedule**

DRA does not feel hearings are necessary as long as Cal-Am is held to the debt/equity ratio it proposes in its application - 60% debt to 40% equity, which is consistent with its Indenture and Decision 05-09-020 (its rate case for Sacramento/Larkfield).

**B. Categorization**

DRA agrees that this proceeding should be categorized as a “ratesetting.”

**II. CONCLUSION**

DRA recommends that the Commission set a prehearing conference for the end of August 2006 at which time it can be determine whether testimony and hearings are necessary.

Respectfully submitted,

/s/ SELINA SHEK

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